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April 11, 2008

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: Ex Parte Notice; WC Docket Nos. 07-21, *Petition of AT&T Inc. For
Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the
Commission's Cost Assignment Rules*; and WC Docket No. 07-273.

Dear Ms. Dortch:

COMPTEL hereby supplements the record in the above-referenced proceeding with the attached comments, which COMPTEL filed in the matter of *Petition of Verizon for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273, as the issues raised in the comments are also applicable to the above-referenced proceeding.

Sincerely,
/s/ Karen Reidy

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Petition of Verizon For Forbearance)	WC Docket No. 07-273
Under 47 U.S.C. § 160(c) From)	
Enforcement of Certain of the)	
Commission's Recordkeeping and)	
Reporting Requirements)	

OPPOSITION OF COMPTTEL

COMPTTEL respectfully submits these comments, pursuant to the Federal Communications Commission's Public Notice, released on December 18, 2007 (DA 07-5034),¹ in opposition to Verizon's petition for forbearance. On November 26, 2007, Verizon filed a petition requesting forbearance under Section 10 of the Communications Act, as amended, 47 U.S.C § 160(c) ("*Section 10*"), from enforcement of certain recordkeeping and reporting requirements, specifically the ARMIS reporting requirements, the affiliate transaction rules, the rate of return rules and property record rules. The Commission must deny Verizon's petition.

Verizon's petition, while not identical, is similar to the petitions of the other Bell Operating Companies (BOCs) seeking to escape reporting and recordkeeping requirements needed to determine if their rates are just and reasonable and in compliance with other regulations. It would be irresponsible and inconsistent with the public interest if the Commission were to eliminate access to pertinent data while it is in the process of

¹ *Petition of Verizon for Forbearance from Enforcement Under 47 U.S.C. § 160(c) of the Commission's Recordkeeping and Reporting Requirements*, WC Docket No. 07-273 (filed Nov. 26, 2007)("Petition").

reviewing policies concerning the just and reasonableness of the BOCs' rates.

Elimination of this data would also be inconsistent with the *Section 272 Sunset Order*.

As Verizon has not met the standard as set forth in *Section 10*, its petition for forbearance must be denied.

The Commission Recently Confirmed These Reports Were Necessary In Serving the Public Interest

Less than six months ago, the Commission established a new framework to govern the provision of in-region, long distance services by BOCs and their independent incumbent local exchange carrier (ILEC) affiliates.² The new framework is based, in part, on the continuation of certain legal obligations, as well as the addition of adopted targeted safeguards.³ An integral aspect of the framework is, among other things, that the BOCs be subject to the very recordkeeping and reporting requirements from which Verizon seeks forbearance.⁴ A grant of forbearance from these requirements is, therefore, inconsistent with the *Section 272 Sunset Order*.

The Commission found these reporting and recordkeeping requirements to be vital in addressing competitive concerns. For example the Commission found: that the distinction of regulated and nonregulated services for accounting purposes provides "an important protection against improper cost shifting by BOCs and their independent

² *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, Report and Order and Memorandum Opinion and Order*, WC Docket No. 02-112, FCC 07-159 (rel. Aug. 31, 2007)(*Section 272 Sunset Order*).

³ *Id.* at ¶ 89.

⁴ *Id.* at ¶ 90, n. 260.

incumbent LEC affiliates;”⁵ that the requirement, that Verizon’s and the other BOCs’ cost allocation manuals describing how they separate regulated from nonregulated costs be filed and subject to public comments, assists in identifying improper cost-shifting between the BOCs’ in-region, long distance services and their telephone local exchange and exchange access services;”⁶ and that the public disclosure, through ARMIS filings, of access charges the independent ILEC affiliates impute to themselves through debits to their nonregulated revenues provides “interested parties with information they can evaluate to determine whether the BOCs and their independent incumbent LECs properly impute the costs of the access they provide their in-region, long distance service offerings.”⁷ It would be disingenuous of the Commission to have granted forbearance from dominant carrier regulations based, in part, on the existence of certain recordkeeping and reporting requirements and then immediately eliminate those requirements.

Verizon’s claims of competitive safeguards are unpersuasive. In the *Section 272 Sunset Order* the Commission evaluated the competition Verizon and its fellow BOCs faced and, nonetheless, concluded “that the BOCs have failed to demonstrate that they lack exclusionary market power with regard to these services by reason of their control of bottleneck facilities.”⁸ Verizon has failed to demonstrate that competition exists in the

⁵ *Section 272 Sunset Order* at ¶ 94.

⁶ *Id.* at ¶ 95.

⁷ *Id.* at ¶ 94.

⁸ *Id.* at ¶ 20.

special access and switched access markets. As COMPTTEL and others have demonstrated time and time again in other proceedings, there is a clear market failure in the special access market. The price of special access services, the rates of return the BOCs receive on the services, and purchasers' use of the BOCs for over 90% of their demand demonstrate the lack of competition in this sector of the market.⁹ As in the special access sector, market forces are non-existent in the switched access market, as carriers have no control over a customer's choice of terminating ILEC. Moreover, ILECs still dominate the vast majority of the local market, owning or controlling 94% of the end-user switched access lines nationally as of June 30 2006.¹⁰

The Commission must adhere to the framework it adopted less than six months ago in the *Section 272 Sunset Order* and deny Verizon's petition for forbearance.

The Reporting and Recordkeeping Requirements are Necessary for Government and Consumer Entities to Perform Their Responsibilities.

The information provided by these reports is used by this Commission, state commissions, and consumer groups in evaluating the just and reasonableness of Verizon's rates and the quality of the services provided. The information is also needed

⁹ See Comments of COMPTTEL, *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, RM-10593, filed Aug. 8, 2007.

¹⁰ Joint Comments and Opposition of the New Jersey Division of Rate Counsel, Public Counsel Section of the Washington State Attorney General's Office and the National Association of State Utility Consumer Advocates, *In the Matter of Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-204, p. 31 (filed Dec. 6, 2007) ("Joint Opposition"), citing Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, *Local Telephone Competition: Status as of June 30, 2006*, (January 2007) ("Competition Report"), at Tables 10 and 11.

for customers (wholesale, enterprise and residential) in order to take enforcement action against Verizon. Thus, the recordkeeping and reporting requirements are clearly necessary in ensuring just and reasonable rates, the protection of consumers, and forbearance is indisputably not consistent with the public interest.

A. Commission Uses this data in the Performance of its Duties

The Commission needs this data in reviewing critical issues under consideration as part of broader rulemaking proceedings. For example, the Commission has an open proceeding to determine whether its rules and policies regarding the provision of special access services have worked as intended, and if not, if they should be modified or repealed.¹¹ The Commission has asked parties to refresh the record in the special access proceeding and has committed to resolving those issues. The Commission also has an open docket to resolve issues related to intercarrier compensation.¹² The Commission must not grant a forbearance that would eliminate data relevant to these proceedings while they are still pending. Even once these issues are resolved, the data will be needed to evaluate the impact and effectiveness of the policies established. The Commission should not shirk its statutory responsibilities to ensure just and reasonable rates by eliminating the very data needed to perform the necessary analysis.

¹¹ See *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket No. 05-25, *AT&T Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 92005)(*Special Access NPRM*).

¹² See *Developing a Unified Intercarrier Compensation Regime*, Further Notice and Proposed Rulemaking, CC Docket No. 01-92, FCC 05-33 (2005). See also "Comment Sought on Missoula Intercarrier Compensation Reform Plan," FCC Public Notice, CC Docket No. 01-92, DA 06-1510 (rel. July 25, 2006).

The Commission also uses this data to discern improper subsidization of unregulated services by regulated services, such as cross-subsidization of competitive services by services supported by the Universal Service Fund;¹³ to protect against anticompetitive discrimination and improper cost shifting in connection with Verizon's provision of in-region, long distance services;¹⁴ to perform the oversight functions and quantify the effects of its policies,¹⁵ e.g. evaluation of the effects of pricing flexibility, the sunset of section 272 affiliate requirements, etc; detect declining service quality for basic local service; and compile studies such as *Statistics of Communications Common Carriers*, *Quality of Service Incumbent Local Exchange Carriers*, *Trend in Telephone Service*, and *Universal Service Monitoring* reports.¹⁶ As the Commission stated in its *2008 Quality of Service Report*, the data extracted from ARMIS may be also be useful for

¹³ See Joint Opposition at 2; Opposition of Ad Hoc Telecommunications Users Committee, *In the Matter of Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-204, at 2 (filed Dec. 6, 2007)("Ad Hoc Opposition"); Sprint Nextel's Comments in Opposition, *In the Matter of Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-204, at 13-14 & 20 (filed Dec. 6, 2007)("Sprint Nextel Opposition");.

¹⁴ See Ad Hoc Opposition at 6; Joint Opposition at 2.

¹⁵ See Sprint Nextel Opposition at 4 & 21; Comments of the Washington Utilities and Transportation Commission, *In the Matter of Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-204, at 9-10 (filed Dec. 6, 2007)("WUTC Comments").

¹⁶ See Comments of the Colorado Public Utilities Commission, *In the Matter of Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-204, at 4 (Filed Dec. 6, 2007)("CPUC Comments"); WUTC Comments at 9.

further investigations.¹⁷ Indeed, that report demonstrates the need for ARMIS data, as it identified significant downward trends in industry-wide service quality performance in a number of areas.¹⁸ The report shows that for Verizon North/South the average residential and business complaints per million access lines has increase approximately 30 percent since 2001.¹⁹ There is also a significant increase since 2001 in residential installation dissatisfaction with Verizon.²⁰

Detecting the improper subsidization of unregulated services through regulated services is more vital than ever given the ILECs' continued dominance over bottleneck facilities combined with ILECs' expansion into the high-revenue triple-play and video business, as well as the Commission's recent decisions to forbear from other competitive safeguards.²¹ As the National Association of State Utility Advocates, in joint comments with state entities, states in the Qwest ARMIS forbearance proceeding, "in the wake of substantial industry consolidation and the FCC's *UNE TRRO* decision, there are fewer prospects than ever for affordable alternatives to basic local telephone service. Therefore

¹⁷ *Quality of Service of Incumbent Local Exchange Carriers*, February 2008, at 4, n. 17, <http://www.fcc.gov/wcb/stats>. ("2008 Quality of Service Report")

¹⁸ "Trouble reports per thousand lines is increasing on average 2.1% annually for the industry overall and 6.9% annually for the smaller companies. Repair intervals are increasing on average 5.5 % annually for the industry overall, 6.7% annually for larger companies, and 4.7 % annually for the smaller companies." *2008 Quality of Service Report* at 2.

¹⁹ *Id.* at 13.

²⁰ *Id.* at 16.

²¹ See Joint Opposition at 23-30; Sprint Nextel Opposition at 3.

the connection [of these rules with the public interest] is as strong, if not stronger, than when the FCC adopted the rules for ARMIS reporting.”²²

B. State Commissions’ Also Rely on this Data

Verizon argues that State Commissions may not lawfully impose recordkeeping and reporting requirements regimes if the Commission grants forbearance.²³ While COMPTTEL does not concur that state imposed recordkeeping and reporting requirements would be inconsistent with a forbearance grant by the Commission in this proceeding, this proposition alone is reason to deny the forbearance petition. State Commissions have significant use of this data, access to which would be in jeopardy according to Verizon’s Petition.

In other proceedings of BOCs seeking forbearance from recordkeeping and/or reporting requirements, states have submitted comments in opposition to a grant of forbearance. As the Public Utilities Commission of Ohio states, this information “is in fact necessary for the various States to perform the duties that Federal and State law, as well as decisions of the Commission, require of them.”²⁴ States use this data to assess quality of service,²⁵ monitor the market, evaluate competitive conditions,²⁶ establish current policies and regulatory reform, administration of state programs and universal

²² Joint Opposition at 31.

²³ Petition at 5.

²⁴ Reply Comments of The Public Utilities Commission of Ohio, *In the Matter of Petition of AT&T inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission’s Cost Assignment Rules, et al*, WC Docket No. 07-21, WC Docket No. 05-342, CC Docket No. 80-286, p. 3 (filed Apr. 9, 2007)(“Ohio PUC Reply Comments”).

²⁵ See Joint Opposition at 8.

²⁶ See Joint Opposition at 2.

service subsidy mechanisms, evaluate unbundled element rates, ensure customers receive good quality at just and reasonable-priced services,²⁷ insure that ILECs' wholesale rates charged to resellers remain in compliance with 47 C.F.R. 51.609,²⁸ and oversee transactions between ILECs and their affiliates, and limit cross-subsidization between such affiliated carriers.²⁹ Indeed, the State Members of the Federal-State Joint Board on Separations emphasized, in response to a similar AT&T forbearance petition, that the obligation to file a cost allocation manual (CAM) and provide an attestation of compliance with certain cross-subsidy provisions were designed to verify compliance with various Commission rules and orders and is important in the policy prohibiting cross subsidies that harm universal service. It recommended a denial of AT&T's petition in its entirety for even requesting forbearance from these rules.³⁰

B. Consumer Groups.

Consumers use the data for formulating and filing complaints³¹ and making informed decisions concerning their choice of local service provider based on such criteria such as service quality and customer satisfaction.³²

²⁷ CPUC Comments at 9.

²⁸ Ohio PUC Reply Comments at 4.

²⁹ *Id* at 4-5.

³⁰ Comments of State Members of Federal-State Joint Board on Separations, *In the Matter of Petition of AT&T inc. for Forbearance Under 47 U.S.C. § 160(c) From Enforcement of Certain of the Commission's Cost Assignment Rules, et al*, WC Docket No. 07-21, WC Docket No. 05-342, CC Docket No. 80-286, p. 13 (filed Mar. 19, 2007).

³¹ *See* Ad Hoc Opposition at 2.

³² *See* Sprint Nextel Opposition at 20-21.

For the foregoing reasons, the Commission should deny AT&T's petition for forbearance.

Respectfully Submitted,

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February 1, 2008